

**United Electrical Contractors Association a/k/a
United Construction Contractors Association
and Local Union No. 3, International Brother-
hood of Electrical Workers, AFL-CIO. Case
29-CA-17284**

October 29, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On May 26, 1993, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 29-RC-7191. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On September 20, 1993, the General Counsel filed a Motion for Summary Judgment. On September 23, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 13, 1993, the Respondent filed a response to the Notice to Show Cause; objection to the General Counsel's Motion for Summary Judgment; and cross-motion to consolidate.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.¹

All representation issues raised by the Respondent were or could have been litigated in the prior represen-

¹ Although the Respondent's answer denies or effectively denies various allegations in the complaint, including the allegation that the Union requested bargaining on March 8, 1993, the General Counsel has submitted documentary evidence supporting the complaint's allegations, including the Union's March 8, 1993 letter requesting bargaining and the Respondent's March 18, 1993 correspondence acknowledging receipt of the Union's letter, and the Respondent has not disputed the authenticity of any of those documents in response to the Notice to Show Cause. Further, the Respondent's answer fails to even address various other allegations in the complaint, including the allegation in par. 11 of the complaint that the Respondent has refused to bargain with the Union since on or about March 8, 1993. Although the Respondent alleges as an affirmative defense that no proper demand for bargaining was made, we find the Respondent's defense without merit based on the aforementioned documentary evidence. Accordingly, as the Respondent has failed to deny or adequately explain its failure to deny the allegation that it has refused to bargain, it is deemed to be admitted to be true. See Sec. 102.20 of the Board's Rules.

tation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board³ makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, the Respondent has been an organization composed of various employers engaged as electrical contractors in New York State, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including Local 363, International Brotherhood of Teamsters, AFL-CIO (Local 363).

During the year ending December 31, 1992, the employer-members of the Respondent, collectively, in the course and conduct of their business operations derived gross revenues therefrom in excess of \$500,000. During the year ending December 31, 1992, the employer-members of the Respondent, collectively, in the course and conduct of their business operations purchased and received at their New York State facilities electrical products and other supplies and materials valued in excess of \$50,000 directly from points outside New York State. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 18, 1989, the Union was certified on February 23, 1993, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent, but excluding all office clerical em-

² The Respondent's cross-motion to consolidate this proceeding with Case 29-CA-17393, which the Respondent asserts alleges that it violated Sec. 8(a)(1), (2), and (3) of the Act and is scheduled for hearing on January 26, 1994, is therefore denied.

³ Member Raudabaugh notes that he did not participate in the underlying representation proceeding.

employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since on or about March 8 and April 16, 1993, the Union, by letter, has requested the Respondent to bargain collectively, and, since March 8, 1993, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 8, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, United Electrical Contractors Association a/k/a United Construction Contractors Association, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent, but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by our employer-mem-

bers, but excluding all office clerical employees, guards and supervisors as defined in the Act.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION